

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION FOUR

GRUMA CORPORATION d/b/a MISSION FOODS

and

Cases 04-CA-199438 and  
04-CA-202091

UNITED FOOD AND COMMERCIAL WORKERS  
LOCAL 1776

**MOTION TO CHANGE LOCATION OF HEARING**

COMES NOW Gruma Corporation, d/b/a Mission Foods (“Respondent” or “Employer”), in the above matter, by and through counsel, and, pursuant to Sections 102.16(a) and 102.65 of the Board’s Rules and Regulations, files this Motion to Change Location of Hearing. This matter is currently scheduled for hearing commencing at 10:00 a.m. on December 18, 2017 and on consecutive days thereafter until concluded,<sup>1</sup> before an as yet undetermined administrative law judge of the National Labor Relations Board at the William J. Nealon Federal Building and Court House, Courtroom #5, 235 North Washington Avenue, Scranton, Pennsylvania 18503. Employer requests that the hearing location be changed from the Federal Courthouse in Scranton to the National Labor Relations Board Region 4 Headquarters at 601 Chestnut Street in Philadelphia, Pennsylvania. In support of its request, Employer states as follows:

Pursuant to § 5–600 of the National Labor Relations Board’s *Bench Book*, Motions to Change Location of Hearing should be guided “by court decisions applying 28 U.S.C. Sec. 1404(a) (‘For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been

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<sup>1</sup> The Employer is also filing a Motion to Reschedule the hearing dates as material witnesses are unavailable on the scheduled dates.

brought...’).” NLRB *Bench Book*, § 5–600, p. 44 (2016). As the *Bench Book* states, “[r]elevant factors include the plaintiff’s choice of location, the availability and convenience of witnesses, parties, and counsel, the location of the documentary evidence, the place or situs where the material events occurred, and the possibility of delay and prejudice if transfer is granted.” *Id.* “The decisions indicate that the trial judge has ‘broad discretion’ in ruling on such motions.” *Id.* (citing *SEC v. Savoy Industries, Inc.*, 587 F.2d 1149, 1154 (D.C. Cir. 1978), *cert. denied* 99 S.Ct. 1227 (1979)). Indeed, the *Bench Book* points out that a determinative relevant factor can be the convenience of the administrative agency involved in the action. *Id.* at 45 (citing *In re National Presto Industries, Inc.*, 347 F.3d 662 (7th Cir. 2003) (upholding trial judge’s denial of employer’s motion to transfer SEC enforcement action from the Northern District of Illinois to the Western District of Wisconsin, even though the only factor favoring the former venue was the convenience of the SEC and its staff)).

Section 1404(a) provides that a court “may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). “The threshold inquiry under § 1404(a) is whether venue in the transferee district is proper.” *Domtar AI Inc. v. J.D. Irving, Ltd.*, 2014 WL 1679713, at \*2 (E.D. Pa. Apr. 25, 2014) citing *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 878 (3d Cir. 1995). In this case, it is clear that the Hearing could have been set for Region 4’s Office in Philadelphia as Region 4 serves eastern Pennsylvania and southern New Jersey from its office in Philadelphia. See <https://www.nlr.gov/region/philadelphia>. This matter arises out of the Employer’s facility in Mountain Top, which is in eastern Pennsylvania, approximately 90 miles from Region 4’s Office. Accordingly, the Hearing in this case might have been set in Philadelphia.

With this threshold cleared, the next step to undertake is "a balancing test to decide whether the convenience of the parties and witnesses and the interest of justice would be better served by a transfer to a different forum." *Domtar AI Inc.*, 2014 WL 1679713, at \*2 citing *Jumara*, 55 F.3d at 878 (3d Cir. 1995). As set forth below, this balancing test involves weighing relevant private interest and public interest factors. Consideration of those factors shows that transfer of the hearing in this case to the Region's Philadelphia office, on balance, serves the convenience of the parties and witnesses and the interests of justice, and is therefore warranted under Section 1404(a).

#### **Private Interest Factors.**

Courts in the Third Circuit have considered the following private interest factors in evaluating a 1404(a) motion: "(1) each party's forum preference; (2) where the claim arose; (3) the convenience of the parties as indicated by their relative physical and financial conditions; (4) the convenience of the witnesses; and (5) the locations of books and records." *Quantum Plating, Inc. v. Cent. Freight Lines, Inc.*, 2011 WL 673913, at \*6 (W.D. Pa. Feb. 17, 2011) citing *Jumara*, 55 F.3d 873 at 879. At the same time, courts have recognized that there is "no definitive formula or list of the factors to consider;" therefore, not every factor is applicable in every case. *Jumara*, 55 F.3d at 879.

In examining each party's forum preference, it is important to note that there are three (3) separate parties in this matter – the Employer, the Union as the Charging Party, and the General Counsel of the NLRB as the prosecuting agency. The Employer prefers to have this matter heard at the Region's office in Philadelphia. The Union's counsel has advised the Employer's undersigned counsel that it prefers that the hearing takes place in Scranton, PA. The General Counsel of the NLRB has not yet expressed its preference, but has invited Employer to file this



motion and promised to give it serious consideration. Moreover, this is not a case where accepting the Employer's forum preference would "merely shift the inconvenience from the defendant to the plaintiff." *Kiker v. SmithKline Beecham Corp.*, 2014 WL 4948624, at \*5 (E.D. Pa. Oct. 1, 2014). In fact, because Employer seeks a transfer to a location that is significantly closer to the Union's headquarters in Plymouth Meeting, PA, and to the Union's counsel's offices in Philadelphia, transferring the hearing to Philadelphia will "likely be more convenient" for the Union. *See Id.* (finding defendant's forum preference weighed in favor of transfer where defendant sought transfer to the district in which plaintiff resided). Accordingly, because the Union's preference for Scranton as the hearing location is entitled to little deference, and because Employer seeks a transfer of the hearing closer to where the Union is headquartered, the first private interest factor favors transfer.

The second private interest factor is the location "where the claims arose." *Quantum Plating, Inc.*, 2011 WL 673913, at \*6. This factor is neutral as the claims arose at the Employer's facility in Mountain Top, PA, which is neither in Scranton nor Philadelphia.

The third private interest factor is the "convenience of the parties as indicated by their relative physical and financial conditions." *Quantum Plating, Inc.*, 2011 WL 673913, at \*6. The Legal Counsel for all three parties in this case are, on information and belief, residents of the greater Philadelphia area and have offices within walking distance of the Region's offices at 601 Chestnut Street.<sup>2</sup> Unquestionably, it would be more convenient for all of the parties' legal counsel not to travel far from their homes and offices for the purpose of attending the hearing in this matter. Indeed, the recent settlement conference in this case took place at Region 4's office

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<sup>2</sup> The undersigned counsel has been a resident of the U.S. Virgin Islands, but has relocated to Philadelphia following the devastation caused by Hurricanes Irma and Maria in September 2017 and currently resides at 2323 Race Street, Philadelphia, PA and works at 1735 Market Street. Laurence Goldman, counsel for the Union, maintains his office at 1845 Walnut Street, Philadelphia, PA. David Rodriguez and Mark Kaltenbach, who will be representing the General Counsel, also both work from Region 4's office in Philadelphia.

in Philadelphia. Moreover, the Union as the Charging Party, is headquartered in Plymouth Meeting, PA, which is less than fifteen (15) miles from Region 4's office. If the hearing location remains in Scranton, the Employer, the Union, and the NLRB stand to unnecessarily incur travel, lodging, and meal costs for their employees' and their counsels' travel to Scranton, much of which would it not incur if venue is transferred to the Region 4's offices in Philadelphia. *See Logopaint A/S v. 3D Sport Signs SI*, 2016 WL 660897, at \*5 (E.D. Pa. Feb. 18, 2016) (logistical and operational costs related to employee travel are appropriate factors to consider and weigh in favor of transfer). Accordingly, the third factor favors transfer.

The fourth factor, convenience of the witnesses, also weighs in favor of moving the hearing to Philadelphia. The vast majority of the witnesses for the Employer will be travelling from around the country, including Texas, California and Vermont. There are many more direct flights to Philadelphia's airport than to the Scranton area airport, making it much easier and faster to get to Philadelphia than to Scranton for all of the witnesses that will be flying in for the hearing. The witnesses that would be driving from the Mountain Top area to the hearing would not be substantially inconvenienced by the additional drive to Philadelphia (approximately 90 miles) as compared to the drive to Scranton (approximately 20 miles). Moreover, the Union's witnesses that work at its headquarters in Plymouth Meeting would have less inconvenience with the hearing in Philadelphia. As a result, this factor also favors moving the hearing to Philadelphia.

The final private factor of the location of books and records again favors moving the hearing to Philadelphia. The Region has been investigating this case since May 2017 and has collected voluminous records during its investigation, all of which are located in its Philadelphia office, and would need to be moved to Scranton for any hearing.

### **Public Interest Factors.**

The public interest factors provide additional support for moving the hearing of this case to Philadelphia. Those factors are: "(1) [the] enforceability of the judgment; (2) practical considerations that could make the trial easy, expeditious, or inexpensive; (3) the relative administrative difficulty in the two fora resulting from court congestion; (4) the local interest in deciding local controversies at home; (5) the public policies of the fora; and (6) the familiarity of the trial judge with the applicable state law in diversity cases." *Quantum Plating, Inc.*, 2011 WL 673913, at \*6 citing *Jumara*, 55 F.3d 873 at 879. As there is "no definitive formula or list of the factors to consider" and not every factor is applicable in every case, Employer only addresses the public interest factors applicable to this case. *Jumara*, 55 F.3d at 879.

The practical considerations that would make the hearing easier and less expensive if held in Philadelphia are substantially the same as those set forth above related to the convenience of the parties and of the witnesses. Specifically, transferring the hearing of this matter to Philadelphia would reduce the cost of hearing in that the Employer, Union and NLRB would all incur less travel, lodging and meal costs for its witnesses and its counsel. *See Northgate Processing, Inc. v. Spirongo Slag McDonald, L.L.C.*, 2015 WL 7308675, at \*4 (W.D. Pa. Nov. 19, 2015) (recognizing that eliminating unnecessary travel by parties and witnesses is likely to reduce the cost of litigation). Moreover, it would be much easier administratively for all parties if they and their counsel would be able to prepare and work out of their respective offices in Philadelphia during the hearing (rather than being forced to set up make-shift work locations in Scranton). For the foregoing reasons, these factors also favor transfer. The remaining public interest factors do not weigh for or against a possible transfer of the hearing to Philadelphia.

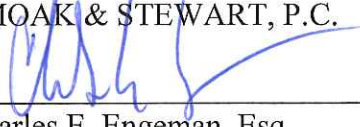


**CONCLUSION**

Respondent respectfully requests that the Regional Director move the hearing location from Scranton to its office in Philadelphia, PA for the reasons set forth above.

Dated: November 14, 2017

Respectfully submitted,  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.



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**CERTIFICATE OF SERVICE**

This is to certify that on the 14<sup>th</sup> day of November, 2017, a .pdf copy of Gruma Corporation d/b/a Mission Foods' Motion to Change Hearing Location was filed through the NLRB E-Filing system and, in accordance with NLRB Rules and Regulations Section 102.114(i), served by certified mail, return receipt requested, to:

Mr. Dennis P. Walsh  
Regional Director, Fourth Region  
National Labor Relations Board  
615 Chestnut Street, #710  
Philadelphia, PA 19106

Lawrence M. Goodman, Esquire  
Danielle K. Newsome, Esquire  
Willig, Williams & Davidson  
1845 Walnut Street, 24<sup>th</sup> Floor  
Philadelphia, PA 19103

United Food and Commercial Workers Local 1776  
3031 A Walton Road  
Plymouth Meeting, PA 19462

Dated this the 14<sup>th</sup> day of November, 2017.

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By: \_\_\_\_\_

  
Charles E. Engeman, Esq.